IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2753 OF 2006

Sunil Tukaram waghmare ..Applicant
Versus
The State of Maharashtra ..Respondent

Mr.Shekhar Ingawale i/by Yogesh M.Nakhwa for the applicant.

Mr.P.S.Hingorani, APP for the State.

Coram : R.S.Mohite,J

Date : 11.08.2006.

PC

1. This is an application for grant of bail. The applicant is shown as an accused in C.R.No.I-105/2005 registered by the Ambernath police station for alleged offences under Sections 147, 148, 149 & 302 of IPC r/w 37(1) and 135 of Bombay Police Act. The incident in question is said to have occurred at about 1.30 A.M. on 9.4.2005. The present applicant Sunil was contesting for the post of municipal Councillor from the ward in an election which was to be held immediately on the next date i.e. 10.4.2005. The applicant was contesting the election as a candidate of Congress/RPI. The Complainant in this case Govinda was the opposition candidate who was contesting the same election on a shivsena/BJP ticket.

2. The police have recorded the statement of the Shivsena candidate Govinda as the FIR as he claims to be an eye witness to the entire incident. In his FIR he contends that on 8.4.2005 at 11.30 P.M. the deceased Jayendra came to his house and informed him that in the evening that at 1.30 co-accused by name Shyam Gaikwad has threatened him against canvassing for the Complainant. They had asked him to sit in his house and not to canvas as otherwise he would have to be attended. The complainant asked him to have courage and accompanied him to his home at 1.15 in the night. In front of the house of the deceased Shyam Gaikwad came in his black Scorpio. bearing No.9999 alongwith the present applicant Sunil, Prashant, Bandhu, Bhosale and one Baban whose full name was not known and 2 others. These persons started assaulting the deceased Jayendra. Shyam Gaikwad then instigated the persons to finish Jayendra Hazare as he has not listened to the warning given to him in the morning. The complainant saw present applicant and Prashant were having choppers in their hands and others were having heavy sticks. The complainant tried to intervene but was assaulted on his chest and hand with fist and kicks. Shyam then instigated the persons to finish the complainant but the complainant managed to run away. On reaching home the Complainant contacted Naresh Mhaske the District Vice President and on his advise he also contacted

the President of the Z.P. Arvind Walekar. Walekar came to his residence and the complainant narrated the entire incident to him. Then they proceeded to the house of the deceased Jayendra and learnt that since Jayendra had sufferred serious injuries on his head he has been taken to the Central hospital at Ulhasnagar by the members of the Shivsena party. When they proceeded to the hospital they learnt that Jayendra has expired.

3. There are 3 other eye witnesses to this crime. The police have recorded the statement of the wife of the deceased by name Shobha. She states that on 8.4.2005 her husband left the home for the purpose of canvassing for the Complainant but did not return home by 10.4.2005 at night. Since her husband did not return home by 12.00 noon she and her daughter went to sleep. At about 1.30 they heard the sound of somebody shouting for help and therefore, she and her daughter went outside and when they opened the door, they saw Prashant, the present applicant, Karande, Baban and 4 to 5 others beating her husband. Sunil and Prashant were holding the weapons which looks like sword in their hands and other persons were holding pipes and wooden stick. She also saw these persons assaulting her husband with bricks and stones and the pots of plant which were lying in the garden. She saw that these persons were caught hold of the Corporator Govind

Savkare and some persons were assaulting. Govind managed to escape and ran away. At that time persons by the neighbourhood by name Vinod came there and all 3 of them also beaten by this group. All the assailants thereafter ran away.

4. The police then recorded the statement of the daughter of the deceased by name Kum.Jayashree. She has given different version. She states that on 9.4.2005 at night her father was sitting in the compound of the house after having his meal. She and her mother were sleeping at the house. At that time they heard shouts for help and they opened the door and found present applicant, Prashant, Shankar, Prakash, Baban and 4 to 5 others armed with iron rod, pipes, bricks and flower pots beating her father. When her father was hit on the head with an iron rod and pipes, he fell on the ground. She was hesitant to save her father but she went ahead alongwith her mother but she was assaulted on her hand, body and injured at various places. Her mother was also assaulted. On hearing a hue & cry their neighbour by name vinod also rushed out to help them and he was also assaulted by these persons. The assailants then ran away and while going away they were saying that he should be beaten as he was canvassing against us. That after some time Shivsena activists gathered there and took away their father for medical treatment. Ujwala and her

mother also went to Ashwini hospital for treatment.

5. Ten days after the incident on 18.4.2005 the police recorded the statement of yet another eye witness by name Vinod Sonavane. He states that on 9.4.2005 at about 1.20 P.M. he heard shouts coming from the open space and abuses were being given. He awoke and opened his door and in the light of his house, he saw the deceased Jayendra was being beaten up by Prashant, Shankar, Prakash and 4 to 5 unknown persons included one Jayant Khatate. These persons were armed with iron pipes, bricks, flower pots and knife. The wife and daughter of the deceased was trying to rescue the deceased. At that time, Prakash Bhosale hit the deceased on his head with an iron pipe causing injury. This witness then ran towards the house. At that time some persons threw bricks on his house. After some time the wife of Jayendra Hazare asked for his help to take her husband to the hospital and she also called her relatives on phone. Some persons from the locality took Jayendra to the hospital. Within a short time, police reached there. They enquired from him and commenced the recording of his statement. At that time lot of workers from Shivsena who were unknown to him came there and in front of the police they took this witness to the side and advised him to go for medical treatment to the hospital and to get away from that place. This witness therefore, left

the place and went to the hospital.

6. From the aforesaid facts it is clear that there appears to be some attempt by Shivsena workers to thwart the recording of the FIR by the independent witness Vinod. His own statement shows that the shivsena workers intervened while recording his statement. Thereafter his statement was recorded after 10 days for the reasons best known to the police. As far as the other eye witnesses are concerned, the story given by them appears to be contrary. The wife states that the deceased had not returned after he left in the morning wherein daughter states that he had his dinner and was sitting in the compound of the house. Further the Complainant states that the present applicant assaulted the deceased with a chopper, the wife has stated that she saw him assaulting with an instrument which looked like a sword and the daughter talks about assault by iron rod. Thus there appears to be prima facie complete variation relating to the weapon said to have been used. From the injury report it appears that there are only 3 incised wounds. There are no injuries by any hard and blunt substance. The story of assault by bricks, fist and kicks blows and throwing of flower pots does not get corroboration. The complainant and the accused are contesting candadites and are political opponents. Taking an overall view of the

matter, I am inclined to grant bail. It is therefore, directed that pending his trial in pursuance of C.R.No.I-105/2005 registered by the Ambernath police station, the applicant may be released on bail in the sum of Rs.25,000/- with one surety in the like amount subject to the condition that he will report to the I.O. attached to the State C.I.D. Konkan Bhavan, New Bombay, once a month on every first Monday till the disposal of the trial. Application stands disposed off. Authenticated copy of this order be provided to the parties.

(R.S.Mohite,J)